

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS**

**FOR THE FOURTH CIRCUIT**

GORDON R. SCHENKELBERGER,  
Petitioner-Appellant,

v.

No. 00-7763

RONALD ANGELONE,  
Respondent-Appellee.

Appeal from the United States District Court  
for the Eastern District of Virginia, at Alexandria.  
Gerald Bruce Lee, District Judge.  
(CA-00-963-AM)

Submitted: April 27, 2001

Decided: May 29, 2001

Before WIDENER, TRAXLER, and GREGORY, Circuit Judges.

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Vacated and remanded by unpublished per curiam opinion.

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**COUNSEL**

Gordon R. Schenkelberger, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit. See  
Local Rule 36(c).

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## OPINION

### PER CURIAM:

Gordon R. Schenkelberger appeals the district court's order denying relief on his Fed. R. Civ. P. 60(b) motion to reconsider for lack of jurisdiction. We vacate the district court's order and remand for consideration of the motion on the merits.

After the district court dismissed Schenkelberger's 28 U.S.C.A. § 2254 (West 1994 & Supp. 2000) petition for failure to exhaust his underlying claim in state court, Schenkelberger timely noted an appeal (No. 00-7202). Subsequently, he filed a Rule 60(b) motion, seeking reconsideration of the disposition of the § 2254 petition. Believing that the notice of appeal divested it of jurisdiction to consider the Rule 60(b) motion, the district court denied the motion. However, this court has declared that "when a Rule 60(b) motion is filed while a judgment is on appeal, the district court has jurisdiction to entertain the motion, and should do so promptly." Fobian v. Storage Tech. Corp., 164 F.3d 887, 891 (4th Cir. 1999).

Accordingly, we vacate the order of the district court dismissing the Rule 60(b) motion and remand for consideration of the motion on the merits. See id. at 892. In so doing, we express no opinion on the merits of the motion. See id. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

### VACATED AND REMANDED